

EXHIBIT “I”

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

3 _____
4 SIDNEY MANES, administrator of
5 the estate of HECTOR RIVAS,
6 Plaintiff,
7 v. Case No.:
8 ONONDAGA COUNTY, CITY OF 5:19-cv-00844-BKS-TWD
9 SYRACUSE, WILLIAM FITZPATRICK,
10 DR. ERIK MITCHELL, AND "JOHN
11 DOES 1-10",
12 Defendants.

13 _____
14 DEPOSITION
15 _____

16
17 WITNESS: Sidney Cominsky
18 DATE: Wednesday, December 20, 2023
19 START TIME: 10:14 a.m. ET
20 END TIME: 10:59 a.m. ET
21 REMOTE LOCATION: Remote Legal platform
22 REPORTER: Zack Shoup, CER-15887
23 JOB NO.: 21976

24
25

1 A P P E A R A N C E S

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1 I N D E X O F T E S T I M O N Y

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1 FEDERAL STIPULATIONS

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3 IT IS HEREBY STIPULATED AND AGREED by and
4 between the attorneys for the respective parties that
5 the presence of the Referee be waived;

6 IT IS FURTHER STIPULATED AND AGREED that all
7 objections, except as to form, are reserved until the
8 time of trial;

9 IT IS FURTHER STIPULATED AND AGREED that this
10 deposition may be utilized for all purposes as provided
11 by the Federal Rules of Civil Procedure;

12 AND FURTHER STIPULATED AND AGREED that all
13 rights provided to all parties by the Federal Rules of
14 Civil Procedure shall not be deemed waived and the
15 appropriate sections of the Federal Rules of Civil
16 Procedure shall be controlling with respect thereto.

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1 FEDERAL REMOTE STIPULATIONS

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3 IT IS HEREBY STIPULATED, by and between the
4 attorneys of record for all parties to the above-
5 entitled action, that:

6 Pursuant to Rule 30(b)(4) of the Federal Rules
7 of Civil Procedure, this deposition will be conducted by
8 remote videoconference with the oath being administered
9 remotely and a court reporter creating an accurate
10 written record; that, if necessary, the parties agree
11 that each witness can be identified with picture
12 identification;

13 No attorney, nor any party or witness, shall
14 capture any still photographs, nor record, by video or
15 audio, any part of these deposition proceedings;

16 Each attorney agrees to instruct their witness
17 that there is to be no communication with anyone outside
18 of the identified and participating group, by chat,
19 text, email, or other means during the deposition;

20 There shall be no other person in the room
21 with the witness during their deposition;

22 Any phone or electronic device in the room
23 with a witness shall be identified and not read,
24 referred to, or otherwise used during the witness'
25 deposition, unless agreed to by all counsel on record.

1 P R O C E E D I N G S

2 THE REPORTER: Good morning. We are now
3 on the record. Today's date is Wednesday, December
4 20th, 2023, and the time is approximately 10:14 a.m.
5 Eastern time.

6 My name is Zack Shoup and I'm the officer
7 designated by Remote Legal, 11 Broadway, Suite 456, New
8 York, New York to take the record of this proceeding.

9 This is the deposition of Sidney Cominsky
10 taken in the matter of Manes versus Onondaga County,
11 Case Number 5:19-cv-00844-BKS-TWD, filed in the United
12 States District Court, Northern District of New York.

13 Would all Counsel please identify
14 themselves for the record starting with the noticing
15 attorney and state who they represent?

16 MR. RICKNER: Yes. Thank you. Rob
17 Rickner, Rickner PLLC. I represent the plaintiff, the
18 estate of Hector Rivas.

19 MR. JULIAN: Robert Julian for Mitchell
20 and Fitzpatrick.

21 MR. VENTRONE: Mark Ventrone for the
22 County of Onondaga.

23 THE REPORTER: Thank you. This
24 deposition is being taken remotely on behalf of the
25 plaintiff and is being conducted pursuant to the

1 procedural rules and laws of the state which governs
2 this matter.

3 As such, all parties agree to this means
4 of capturing the official record which may include
5 recording by audio and/or audiovisual means and agree
6 not to oppose admission of this proceeding on the basis
7 of the personnel or method by which the testimony in
8 this proceeding was captured.

9 Do all parties so stipulate?

10 MR. RICKNER: So stipulated by Plaintiff.

11 MR. VENTRONE: Yes.

12 THE REPORTER: Do Defendants' attorneys
13 so stipulate?

14 MR. JULIAN: Yes.

15 MR. VENTRONE: Yes.

16 THE REPORTER: Thank you. And I will now
17 swear in the witness.

18 Sir, could you please state and spell
19 your full name for the record?

20 MR. COMINSKY: Sidney Cominsky, S-I-D-N-
21 E-Y C-O-M-I-N-S-K-Y.

22 THE REPORTER: Could you please raise
23 your right hand?

24 MR. JULIAN: I just want to make sure all
25 objections are reserved except as to form, correct?

1 MR. RICKNER: Yeah. Standard federal
2 rules, obviously. We don't -- we can't change them by
3 agreement.

4 THE REPORTER: All right.

5 MR. RICKNER: Anything else?

6 THE REPORTER: Sorry. Okay. Sorry.
7 I'll keep going.

8 Mr. Cominsky, could you please raise your
9 right hand?

10 Do you swear or affirm that the testimony
11 you shall give today in this proceeding will be the
12 truth, the whole truth and nothing but the truth?

13 MR. COMINSKY: I do.

14 WHEREUPON,

15 S I D N E Y C O M I N S K Y,
16 having been called as a witness, being duly sworn by the
17 notary public present, testified as follows:

18 THE REPORTER: Thank you. You may lower
19 your hand.

20 The witness is sworn and Counsel, you may
21 begin.

22 MR. RICKNER: Thank you.

23 EXAMINATION

24 BY MR. RICKNER:

25 Q Mr. Cominsky, may I presume you have taken a

1 deposition during your career as an attorney?

2 A Literally thousands of them.

3 Q All right. I'm going to skip over some of the
4 usual bits, then.

5 A Okay.

6 Q Just the stuff that matters. You -- do you
7 have any medication or any medical reason why you can't
8 give full and complete testimony today?

9 A No.

10 Q Okay. Did you do anything to prepare for
11 today's deposition?

12 A Put on a suit.

13 Q Did you discuss the substance of today's
14 deposition with anyone prior to coming here?

15 A A couple of months ago Bob Julian and I had a
16 brief conversation. I told him basically that my file
17 had been disposed of years ago. He suggested I look
18 over some materials. I told him I probably wouldn't,
19 and I didn't.

20 He gave me the copy of Sidney Mane's
21 deposition. I've not read it. He sent me an old
22 newspaper article. I don't think I read it, but I
23 haven't looked at anything for weeks and that's the
24 extent of -- of what it was. I don't have a file. And
25 so I haven't looked at anything.

1 Q Fair enough. Now, would it be correct that
2 you represented Erik Mitchell at some point in your
3 life?

4 A Oh, absolutely.

5 Q Okay. Great. And when did you first
6 represent Erik Mitchell?

7 A I think in the 1980s.

8 Q I'm going to put -- we're going to do this as
9 Exhibit 32 because previously we marked up to 31. And I
10 believe that this is shared for everyone. In the
11 printouts it's a letter from the Onondaga County
12 Department of Law -- February 5, 1988, directed to you.

13 A I see it. Okay.

14 (Exhibit 32 marked for identification.)

15 BY MR. RICKNER:

16 Q Okay. Now --

17 A Give me one minute to look it over.

18 Q Please do.

19 A All right.

20 Q Okay. Now, does this refresh your
21 recollection reading what's been marked as Exhibit 32?
22 That you were -- represented Erik Mitchell with respect
23 to an investigation by the County attorney in 1988?

24 A As I said, it was in the '80s that I
25 represented him. I just don't know when it began, so to

1 speak. I don't know how far along in '88 this was.

2 Q Okay. But at least in 1988 you represented
3 him with respect to an investigation by the county
4 attorney? Do you remember that?

5 A Correct.

6 Q Okay. Do you remember the substance of that
7 investigation?

8 A There were Department of Health concerns and
9 and some complaints about Dr. Mitchell's professional
10 behavior. And Dr. Mitchell had called me, asked me if I
11 would represent him, and I said I would.

12 Q And do you know if Dr. Mitchell was
13 interviewed during this investigation in 1988?

14 A I know we met at one time with Nick Pirro, Ed
15 Kochian and Bill Fitzpatrick at the County office
16 building, but that was at the latter part of all of
17 this. I don't recall. This is over 30 years -- this is
18 a long time. I just don't remember.

19 Q You know, Counselor, I'm sure you've said this
20 to witnesses many times in your own career, but it's not
21 a memory test. I understand it's 30 years ago. I've
22 just got to cover the territory, see what you do
23 remember.

24 A It's not a problem. Go ahead.

25 Q All right. I fully accept that you may not

1 remember. Okay. I'm going to take this exhibit down.

2 Now, at least in 1988, were you being paid by
3 Dr. Mitchell? Dr. Mitchell's insurance company? Was he
4 indemnified by the County or something else?

5 A I was not paid. All of this was pro bono.

6 Q Out of curiosity, why did you take on this
7 case pro bono?

8 A Because I saw it as an opportunity to get free
9 advertising, so to speak. It was something of public
10 concern. I was a young attorney. I was just at this
11 time -- let's see, '88, I was a kid and it was an
12 opportunity to represent someone who was in the public
13 eye and a way for me to establish a reputation, and
14 that's why I did it.

15 Q Understood. Now -- shoot.

16 All right, I'd like to mark this as Exhibit
17 33. And this is a newspaper article from the Post-
18 Standard dated March 3rd of 1993.

19 A Okay. Give me a minute.

20 (Exhibit 33 marked for identification.)

21 Q Yes, please do. And if you can --

22 A The doctor's review. Okay. I got it.

23 Q Yes. It's three pages. Please, you know,
24 read it over and familiarize yourself with the document
25 a little bit, and hopefully it refreshes your

1 recollection.

2 A Okay. I've kind of reviewed it.

3 Q Okay. I appreciate that. Now, having
4 reviewed this newspaper article, does that refresh your
5 recollection as the types of allegations that were being
6 made about Dr. Mitchell in the early part of 1993?

7 A I guess so, yeah.

8 Q Okay.

9 A But, I mean, it's only whatever I read. I
10 don't remember much about this, other than what you've
11 just shown me.

12 Q Okay. Well, based on what I've just shown
13 you, in March of 1993, there was a series of allegations
14 about misconduct directed towards Erik Mitchell, both in
15 the media and, I believe, in the County Attorney's
16 office. Do you remember that?

17 A Yes. John O'Brien, the reporter, was very
18 persistent and he felt that there was wrongdoing going
19 on, and these employees made certain complaints. And as
20 far as I can recall from this article, much of it was
21 never proven, and some of it was unresolved.

22 Q Okay. Now during this -- when this first came
23 to light, did you discuss the allegations against Erik
24 Mitchell with D.A. Fitzpatrick?

25 A The D.A.'s attacker? I -- I'm not sure if I

1 know what you're --

2 Q Did -- in the beginning part of 1993, did you
3 ever discuss the allegations made against Erik Mitchell
4 with D.A. William Fitzpatrick?

5 A I don't recall. As I told you, I recall one
6 meeting with Nick Pirro, the County Executive, Ed
7 Kochian, which is K-O-C-H-I-A-N, who was Nick Pirro's, I
8 guess, executive officer or something, William
9 Fitzpatrick, Erik and myself. And I recall getting into
10 a fight with Bill Fitzpatrick in the office. And I
11 basically told him to stick it in his ear, and if he was
12 prepared to go to court, we'd go to court.

13 Q Understood. When do you think this meeting
14 was?

15 A No idea. I -- I'm -- I would say it was
16 somewhere within a year of Erik resigning --

17 Q Okay.

18 A -- because that's what the discussion was
19 about, was that they wanted him to resign.

20 Q Okay. Was this around the time that the
21 county attorney was doing its investigation?

22 A I don't know.

23 Q So this conversation with Fitzpatrick, you
24 said you were fighting with him. What were you fighting
25 about?

1 A He made certain statements about Erik that I
2 found offensive, and I don't even recall what he was
3 saying. And I told him that if that's how he felt,
4 let's go to the courthouse and fight it out. And
5 basically, Nick Pirro and Ed Kochian told us to quiet
6 down and calm down. And Erik and I -- I kind of recall
7 getting up and leaving, and that's about it. At that
8 time, I was doing criminal defense work, and -- and Bill
9 Fitzpatrick and I were not what I would call close
10 friends.

11 Q So you knew him as the District Attorney at
12 this time -- as well as in his role as investigating
13 Erik Mitchell?

14 A I don't think there was ever a time I didn't
15 know Bill Fitzpatrick as being in the D.A.'s office. He
16 was either an assistant A.D.A. -- you know, an A.D.A.
17 rather, or the District Attorney, and at this time when
18 we had the argument, he was the District Attorney.

19 Q Okay. So at the time you had the argument he
20 was the District Attorney? Did I get that right?

21 A Correct.

22 Q Okay. Now, at the -- during that
23 conversation, did he call for Erik Mitchell to resign?

24 A I don't -- I was going to say I don't recall,
25 but since you're saying call -- I think the conversation

1 was Nick Pirro, Ed Kochian, and Bill Fitzpatrick trying
2 to figure out a way to let Erik leave instead of being
3 fired because they felt that the -- the newspaper, the
4 public pressure was too much, and they were trying to
5 resolve this. And that's what I recall.

6 Q Was there ever a discussion where William
7 Fitzpatrick said that he would avoid bringing criminal
8 charges if Mitchell resigned?

9 A I don't recall it specifically, but that's
10 kind of the gist. And I think that's where Bill and I
11 got into an argument, and I basically said, you know, go
12 ahead and do it. And of course, everybody else was
13 like, let's slow down, you know.

14 Q After, you know, after that argument, at some
15 point, did Erik Mitchell agree to resign to avoid
16 criminal charges?

17 A That's two questions you're asking. Did he
18 agree to resign? The answer is yes.

19 Q Okay.

20 A Did he agree to do it because he wanted to
21 avoid criminal charges? I don't know.

22 Q Okay.

23 A I don't remember. I don't even know if we
24 discussed that aspect of it.

25 Q Okay. Was your understanding with William

1 Fitzpatrick that if he resigned, that Fitzpatrick would
2 stop pursuing criminal charges?

3 A I think that was. I don't recall anything
4 specific, but that would make sense.

5 Q And. I'm trying to -- prior to this
6 conversation, was there a time when you felt that
7 William Fitzpatrick was trying to protect Erik Mitchell
8 from the allegations in the media?

9 A I don't know. I mean I think probably Bill
10 Fitzpatrick had certain cases that relied on Erik
11 Mitchell's testimony, so he might have been in a spot,
12 but he never said anything to me. That's just my guess.

13 Q Okay. Do you believe that William Fitzpatrick
14 started pursuing criminal charges when he ran out of
15 cases that he was relying on Erik Mitchell?

16 A No. I -- I don't have any way of knowing why
17 or what.

18 Q With respect to Erik Mitchell resigning, was
19 there ever some sort of written agreement or contract?

20 A I don't recall.

21 Q Hold on. I'm going to close out this exhibit,
22 although -- all right.

23 All right. I'm going to share, this is --
24 should be in your pile. It's a November 19th, 1993
25 letter.

1 A Hold on. November?

2 Q 19th of 1993.

3 A From the Department of Law?

4 Q Yes.

5 A Okay. Hold on.

6 THE REPORTER: Mr. Rickner, would you
7 like this marked Exhibit 34?

8 MR. RICKNER: Yes, please.

9 (Exhibit 34 marked for identification.)

10 THE WITNESS: Okay. This is a letter
11 from Diane E. Tucker?

12 MR. RICKNER: Correct.

13 THE WITNESS: Okay.

14 BY MR. RICKNER:

15 Q Now, does this Exhibit 34, does this refresh
16 your recollection that you attempted to have
17 indemnification provided by the County of Onondaga for
18 Erik Mitchell?

19 A Well, that's a different question than you
20 asked me before. First of all, I still didn't get paid
21 any fees. Second of all, there obviously was some
22 question as to whether or not Erik Mitchell would be
23 indemnified, and I don't know what it was regarding.

24 Q Right. Well, that's what I was asking. Do
25 you remember seeking indemnification for something

1 related to Erik Mitchell?

2 A Well, I must have been seeking clarification,
3 providing defense and indemnification. That's what it
4 says, but I don't recall what the circumstances were.

5 Q Okay. Do you recall whether or not the County
6 of Onondaga ever denied indemnification to Erik Mitchell
7 for anything?

8 A I don't remember them giving him
9 indemnification or denying. I don't remember.

10 Q About when do you believe you stopped
11 representing Erik Mitchell?

12 A Right around this time of '93, '94. I don't
13 think much longer, but again, I don't recall. I don't
14 have any -- I don't have a file. I did have a bunch of
15 newspaper articles, but I moved about three years ago
16 from my home, and I don't have any idea of where those
17 articles are. And like I said, I got rid of my file
18 years ago. So I don't know. I really don't know.

19 Q Now, when do you think the last time you spoke
20 with Erik Mitchell was?

21 A Four or five years ago, maybe, six.

22 Q Okay. What was the content of that
23 conversation?

24 A Well, I don't know if I can answer that.

25 Q Well, I guess that's a different question.

1 But did you -- what -- the last time you spoke with Erik
2 Mitchell, were you -- was he seeking representation from
3 you?

4 A I don't know if I can answer that.

5 Q Well, to establish whether -- I understand
6 that you are worried that it's privileged. However, if
7 you aren't acting in his capacity as an attorney and he
8 isn't seeking to retain you as an attorney, I don't
9 think that privilege applies.

10 MR. JULIAN: No, I don't agree with --

11 THE WITNESS: And I -- I appreciate what
12 you think. You're going to have to get a ruling from a
13 court on that. Okay? I -- I don't know if you're right
14 or wrong, but without a judge telling me to say it, I'm
15 not talking.

16 BY MR. RICKNER:

17 Q Okay. Just to avoid the potential unnecessary
18 motion practice, will you say whether as a general
19 matter, it was with respect to the allegations in this
20 case or something entirely separate?

21 A No. I will not say anything -- you're asking
22 -- I mean, I appreciate your creativeness, but I ain't
23 talking.

24 Q Well, I don't -- I don't want to march into
25 court only to find out that you guys were talking about

1 some case totally unrelated to this one.

2 A So --

3 Q So I'm just giving you the opportunity to
4 potentially avoid that. I don't know what I'm doing in
5 the future.

6 A I -- I can't answer. I don't think it's
7 appropriate. Or let's put it --

8 Q Well --

9 A I don't -- I do not know if it's appropriate
10 or inappropriate, and I'm going to have to err on the
11 side of caution.

12 Q Okay. Then, one last question.

13 A I get -- one way or another, but I -- you got
14 to get a court to make a ruling on it.

15 MR. RICKNER: Well, one other option. I
16 just ask Mr. Julian again, to avoid possible unnecessary
17 motion practice, would you allow your client -- you
18 know, you represent Dr. Mitchell. Would you allow him
19 to answer this one question? Was this conversation on
20 topic or effectively off topic with respect to this
21 case.

22 MR. JULIAN: Would I allow -- Dr.
23 Mitchell is not here to consult with him. I do not know
24 about this issue one way or the other, and so I have to
25 respect the witness's position at this point.

1 MR. RICKNER: That's fine. As I said,
2 I'm just trying to avoid, you know, potentially fighting
3 about nothing. But I'll move on.

4 BY MR. RICKNER:

5 Q Between 1993 and today, have you had any
6 discussions with William Fitzpatrick about Erik Mitchell
7 or the subject of this case?

8 A I don't know if I did or didn't. I -- I
9 simply don't -- I can tell you this much. In the last
10 20 years or so, I can say absolutely not, but I -- I
11 don't know. I mean, I may have seen him in 1993 or '5
12 or whatever, and I don't know. I mean I did not have
13 much of a relationship with Bill Fitzpatrick. I've
14 probably seen Bill a half a dozen times in the last 30
15 years at some event. We are not socially ever together.

16 Q The same question with Nicholas Pirro. Have
17 you discussed Erik Mitchell or the subject of this case
18 at any time besides for the one conversation that you do
19 remember.

20 A I don't recall. Can you tell me when Erik did
21 resign?

22 Q Probably. It's in 1994. Well, he resigned,
23 and then he kept -- stayed on for a little bit, but if
24 you're wondering about the timeline, it's -- that's the
25 area.

1 A It's possible that I saw Nick Pirro and had
2 some kind of a conversation with him after the meet. He
3 may have -- he may have said, you know, have you made up
4 your mind? Are you, whatever? Where's Erik going? But
5 I don't recall anything. And I had a nice relationship
6 with Nick Pirro, so. His office was next door to the
7 County courthouse. I may have run into him, but I don't
8 recall.

9 Q Are you familiar at all with the case, the --
10 Hector Rivas's criminal case?

11 A No.

12 Q Great. Just to close the loop, if I
13 understand correctly, the only conversation you remember
14 between Erik Mitchell, Nick -- what's -- Nicholas Pirro
15 and William Fitzpatrick, or in any combination of them,
16 is the one that we've discussed, right?

17 A That's the only one I recall, yeah.

18 Q Okay. And --

19 A I mean, because we were so hot headed at the
20 time. Bill and I, not on good terms.

21 Q Did you go into the meeting not on good terms,
22 or did you become not on good terms because of the
23 meeting?

24 A He was a D.A. I was a criminal defense
25 attorney. There were no such thing as good terms.

1 Q Just so to answer my question, you already
2 weren't on good terms before the meeting started?

3 A Right. Or let's put it this way, we were on
4 the opposite sides of each other and we had very little
5 contact outside of a courtroom.

6 Q All right. I don't know if anybody else has
7 any questions.

8 EXAMINATION

9 BY MR. JULIAN:

10 Q I do. Mr. Cominsky, as you know, I represent
11 both Dr. Mitchell and William Fitzpatrick.

12 MR. RICKNER: You're going to have to get
13 real close to a microphone because I'm going to guess
14 the court reporter is about to jump in and say, "I can
15 barely hear you," so.

16 MR. JULIAN: Okay. Well, I have no idea.
17 Is this any better?

18 THE REPORTER: Yes. Speaking up --

19 MR. RICKNER: Much better.

20 THE REPORTER: Speaking up works.

21 MR. VENTRONE: We don't know where the
22 microphone is. We're guessing it's built in.

23 MR. JULIAN: I'll try to keep my voice
24 up. Just, I mumble.

25 MR. RICKNER: Once you started projecting

1 your voice. It worked great.

2 THE WITNESS: Excuse me. Would it help
3 if I moved down so that he's facing?

4 THE REPORTER: This is great.

5 MR. JULIAN: I don't know what they said.

6 THE WITNESS: I -- I didn't understand
7 what you folks said.

8 THE REPORTER: The speaking up and you
9 sitting where you are is working fine.

10 THE WITNESS: Oh, okay.

11 MR. JULIAN: Okay. Good.

12 BY MR. JULIAN:

13 Q So, Mr. Cominsky, you understand I represent
14 both Dr. Mitchell and District Attorney Fitzpatrick. I
15 have some questions for you based upon the Complaint
16 that was filed in this case and the allegations that
17 were made by Sidney Manes.

18 A Okay. I did not know you were representing
19 Bill Fitzpatrick up until 3.4 seconds ago. Okay? But,
20 fine. I don't know anything about the Complaint. I've
21 never seen it.

22 Q Not my question.

23 A Okay.

24 Q Do you know Sidney Manes very well?

25 A Yes.

1 Q Have you ever spoken with him about this case?

2 A I don't remember.

3 Q Did you ever speak with Sidney Manes on behalf
4 of Dr. Mitchell about the Nanette Gordon case?

5 A I don't remember.

6 Q Did you ever enter into any sort of agreement
7 with District Attorney Fitzpatrick that provided that --
8 withdrawn.

9 Let me ask you this. To your knowledge, did
10 Dr. Mitchell ever have a hundred misdemeanors
11 outstanding against him during the time that you
12 represented him?

13 A Absolutely not.

14 Q To your knowledge, did Dr. Mitchell have
15 several felonies pending against him during the time
16 that you represented him?

17 A Not that I know of.

18 Q Did you ever participate in a discussion with
19 Mr. Fitzpatrick in which Mr. Fitzpatrick advised you
20 that he would not prosecute Dr. Mitchell if Dr. Mitchell
21 testified before the grand jury that it was his opinion
22 that Valerie Hill could have died on March 27th, 1987?

23 A Did you say Valerie Hill?

24 Q Yes.

25 A I don't know. I'm not familiar with the name

1 Valerie Hill.

2 Q Did you ever participate in a conversation
3 with District Attorney Fitzpatrick in which he advised
4 you that he would not prosecute Dr. Mitchell if Dr.
5 Mitchell testified that it was his opinion that a
6 defendant would have a different date of death than he
7 had previously opined?

8 A I'm sure I did not participate in any
9 conversation where anyone asked Erik Mitchell to perjure
10 himself.

11 Q And that would be true in terms of Dr.
12 Mitchell's testimony either before a grand jury or a
13 trial court, correct?

14 A Absolutely. I would not have participated in
15 that conversation. That's a felony, I believe, and if
16 it -- if it had occurred, I would have been obligated to
17 report it to someone. Or at least if it occurred in my
18 presence.

19 Q And just to close the loop, did you ever offer
20 District Attorney Fitzpatrick anything about Dr.
21 Mitchell's testimony in any pending case or future
22 criminal case in return for Dr. Mitchell not being
23 prosecuted in the Nanette Gordon case?

24 A No.

25 Q Did you ever make such an offer to him about

1 anything?

2 A Absolutely not.

3 Q Dr. Mitchell resigned on November 19th, 20 --
4 1994. Did you participate in the preparation of his
5 letter of resignation?

6 A I don't recall.

7 Q To your recollection, was the meeting that you
8 had, the one meeting that you had with County Executive
9 Pirro, Deputy County Executive Kochian, Dr. Mitchell and
10 yourself, was that meeting shortly before Dr. Mitchell
11 resigned?

12 A I tend to think so, but I don't recall the
13 time.

14 MR. JULIAN: Thank you.

15 MR. VENTRONE: I have nothing.

16 MR. RICKNER: I just have a very brief
17 follow up, unless the County has some questions.

18 THE WITNESS: You got to speak up a
19 little bit. I heard you got something brief.

20 MR. RICKNER: I have a few questions,
21 unless the county has questions first.

22 MR. VENTRONE: I don't.

23 FURTHER EXAMINATION

24 BY MR. RICKNER:

25 Q Okay. Prior to his resignation, Erik Mitchell

1 periodically testified in criminal cases; is that right?

2 A I guess so. I mean, I don't recall. I would
3 suspect he would.

4 Q Let's phrase this differently. Were there
5 times where Erik Mitchell would have spoken with the
6 prosecutor's office and William Fitzpatrick when you
7 weren't around?

8 A I -- again, he's a -- a County medical
9 examiner. It would be part of his job normally to -- if
10 -- if something occurred that would go to court, I'm
11 sure somebody from the D.A.'s office would talk to him.

12 Q But just to be clear, when you were
13 representing Erik Mitchell, you were not present with
14 every single conversation he had with D.A.'s office or
15 William Fitzpatrick, right?

16 A Correct.

17 Q Okay. Now, there was one of the allegations
18 against Erik Mitchell was with respect to him taking
19 body parts and burying them in his farm; is that right?

20 A I would -- now that you bring it up, what I
21 remember was he was doing some kind of a, like a course
22 for investigators and prosecutors, and he had taken body
23 parts -- I don't know, I don't recall what parts --
24 burying them, putting them in certain areas, and then
25 trying to instruct people about, you know, if you're

1 looking for this, this is what you want to do. You want
2 to make sure you -- you preserve this or that. And I do
3 recall something about that.

4 Q Do you recall William Fitzpatrick stating in
5 sum and substance, you know, if that was occurring
6 without the family's permission, that could be a crime?

7 A I don't recall any -- I don't -- I know it
8 caused people to question whether or not it was
9 appropriate. I do not know if anybody from the D.A.'s
10 office said that could be a crime. I don't recall.

11 Q All right. That's fine. I actually have no
12 further questions, then.

13 MR. JULIAN: I have one other.

14 MR. RICKNER: Okay.

15 MR. JULIAN: The prototypical lawyer's
16 one other question.

17 MR. VENTRONE: I'm leaving tomorrow
18 morning.

19 FURTHER EXAMINATION

20 BY MR. JULIAN:

21 Q Did you speak with District Attorney
22 Fitzpatrick on behalf of Dr. Mitchell at any time with
23 regard to Dr. Mitchell's testimony in the case of Hector
24 Rivas?

25 A I don't know anything about the Hector Rivas

1 case.

2 Q Did you ever, in a discussion with Doctor --
3 with District Attorney Fitzpatrick, offer that Dr.
4 Mitchell would change his opinion with regard to the
5 time of death in return for his not being prosecuted as
6 it pertains to the Hector Rivas case?

7 A Again, I would not suborn perjury.

8 Q So the answer is no?

9 A Answer is absolutely, unequivocally.

10 Q Fair to say if that conversation that --

11 A If that conversation occurred, I would have
12 had Bill Fitzpatrick where I wanted him. I would have
13 reported that so quickly, it would have made everybody's
14 head turn. There is no way in the world that I would
15 get involved in committing a felony in order to protect
16 the District Attorney's office.

17 MR. JULIAN: Nothing further.

18 MR. RICKNER: Nothing further for me.

19 MR. JULIAN: Mark?

20 MR. VENTRONE: I'm good.

21 THE REPORTER: As long as we're still on
22 record, just a few brief questions on the court reporter
23 side of things. Sorry, I'll speak up. First, Mr.
24 Cominsky, would you like to read and sign the transcript
25 for the purpose of producing an errata sheet?

1 THE WITNESS: I don't think it's
2 necessary.

3 THE REPORTER: Okay. Mr. Rickner, as the
4 questioning attorney, would you like to purchase the
5 original transcript?

6 MR. RICKNER: Yep. I'll buy a copy for
7 myself, absolutely.

8 THE REPORTER: And to both opposing
9 counsel, Mr. Julian, would you like to purchase a copy
10 of the transcript?

11 MR. JULIAN: I'll buy a copy, yes.

12 THE REPORTER: And Mr. Ventrone?

13 MR. VENTRONE: No, I'm good. I don't
14 need one.

15 THE REPORTER: If you could stay on for
16 spelling clarifications, I'd appreciate it, but 10:59
17 a.m. Eastern time, we are going off the record.

18 (Proceedings concluded at 10:59 a.m.)

19 (Read and Sign waived.)

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CERTIFICATE OF REPORTER

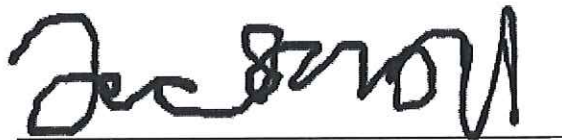
I, Zack Shoup, hereby certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth;

That the proceedings were recorded by me and
thereafter formatted into a full, true, and correct
transcript of same;

I further certify that I am neither counsel
for nor related to any parties to said action, nor in
any way interested in the outcome thereof.

DATED, this 9th day of January 2024.

A handwritten signature in black ink, appearing to read 'Zack Shoup', is written over a horizontal line.

Zack Shoup, CER-15887

Court Reporter